

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LEWIS G. DAVIS
and
DENNIS G. DAVIS

COMPLAINANTS

VS.

BOONE COUNTY WATER AND SEWER DISTRICT

DEFENDANT

CASE NO.
90-061

O R D E R

On July 11, 1990, the Commission granted Lewis G. Davis and Dennis G. Davis rehearing of an Order issued June 8, 1990, dismissing their complaint against the Boone County Water and Sewer District ("Boone County"). In their complaint, filed March 19, 1990, the Davises alleged that they were entitled to recover \$1,419.36 from Boone County. That sum represented the unreimbursed balance of the amount charged to the Davises for the construction of a water line to their property. As grounds for their complaint, the Davises stated that the water line installed to their property had subsequently been extended to serve a 1,500 family development and that they were entitled to recover the entire cost of construction of the original line through reimbursements for further tap-ons. Boone County filed an answer on April 19, 1990 denying any obligation to reimburse the Davises based upon any tap-ons beyond the original extension. In its June

8, 1990 Order, the Commission ruled that in accordance with 807 KAR 5:066, Section 12(2)(a)(b), the Davises were not entitled to reimbursement for connections made to that part of the water line that was installed beyond their property. On June 21, 1990, the Davises requested the Commission to reconsider its decision and provided additional information regarding circumstances surrounding the construction of the water line and connections made to the section of the water line which did not extend beyond their properties. Based upon the additional information contained in the letter, the rehearing was granted.

STATEMENT OF FACTS

On January 30, 1981, Boone County entered into a written contract with Lewis G. Davis to construct an extension to an 8 inch water main. Lewis G. Davis and Dennis G. Davis are father and son, and the owners of adjoining properties on Richwood Road in Boone County. Although Dennis Davis was not a party to the contract, the purpose of the extension was to serve the properties owned by both Davises and they shared the cost of construction. The contract estimated the distance of the extension to be approximately 150 feet and required Lewis Davis to pay the cost of construction at the rate of "\$15 per foot times the number of feet installed." The contract also required Lewis Davis to pay Boone County \$1,000 upon execution of the agreement, with the balance to be paid upon completion of construction.

The line was constructed by Boone County on March 30 and March 31, 1981 and two meters were installed. At the hearing, Boone County stated that, in accordance with its policy, the line

was constructed from the existing main to the Davis boundary line furthest from the point of connection, a distance of 220 feet. This policy was instituted by Boone County to facilitate future expansions of the system. The total cost of construction was \$4,459.86, or \$20.27 per linear foot.

On April 29, 1981, Lewis Davis received a statement for the balance of construction costs. The statement was based on 200 feet of water line at a rate of \$15 per linear foot for a total cost of \$3,000. After crediting Lewis Davis with the initial payment of \$1,000, the balance due shown on the statement was \$2,000.

When the Davises received the statement, Dennis Davis complained to Paul Kroger, the manager of Boone County, that it was excessive and not in accordance with the contract. Dennis Davis told Mr. Kroger that the distance from the existing main to the point where it was connected to his meter was only 150 feet and that he should not be required to pay for any extension beyond that point. After some discussion, Dennis Davis and Paul Kroger reached a compromise under which the Davises agreed to pay for 180 feet at \$15 per foot, for a total of \$2,700. After applying the initial payment of \$1,000 to the compromised amount, the Davises made an additional payment of \$1,700 for the balance.

Since the construction of the water line to the Davis property, one other customer has tapped into the original

extension and in May 1987, the Davises were reimbursed \$1,280.64.¹

According to records of Boone County, on March 30, 1981, Lewis and Dennis Davis were also assessed tap-on fees of \$354.37 and \$334.37, respectively, for 1 inch meters. Neither tap-on fee was ever collected. According to Boone County's tariff at the time, the tap-on fee for a 1 inch meter was \$250. Boone County testified that the additional amounts were assessed because it was necessary to bore under the road in order to connect the Davises' meters to the water line.

DISCUSSION

The Davises contend that they should recover the sum of \$1,419.36 which, based on the figures contained in the contract (150 feet at \$15 per foot), represents the unreimbursed portion of

¹ Reimbursement was calculated by Boone County as follows:

<u>Total Cost of Construction:</u>	\$4,459.86
<u>Per Foot Cost</u> (based on 220 ft.):	\$ 20.27
<u>Boone County contribution</u> (based on 3 tap-ons):	\$3,040.50
<u>Davises required contribution</u> ($\$4,459.86 - 3,040.50$):	\$1,419.36
<u>Amount paid by Davis upon</u> <u>execution of contract:</u>	\$1,000.00
<u>Amount paid by Davises upon</u> <u>completion of construction:</u>	\$1,700.00
<u>Amount Davises reimbursed for</u> <u>Withers Connection</u> ($\$2,700.00 - 1,419.36$):	\$1,280.64

the \$2700 paid to Boone County. Boone County maintains that in accordance with its policies the Davises are responsible for the 220 feet of line, the amount actually installed, even though the line extends past their property, and that their obligation should be calculated at the rate of \$20.27 per linear foot, the actual cost of construction.

If this were merely a matter of interpreting the contract executed by Boone County and Lewis Davis, the Davises would not be entitled to reimbursement of any amount. While the contract executed by the parties contains provisions which appear to be in conflict when it is read as a whole, the contract is fairly explicit. What it provides, in its simplest terms, is that Boone County would construct an extension to the water line to the Davis properties and that Lewis Davis would pay \$15 per linear foot for the cost of construction. The contract makes no provision for reimbursement of any portion of the construction cost to the Davises nor for payment to Boone County for any amount in excess of \$15 per linear foot.

807 KAR 5:066, Section 12, provides, in pertinent part, as follows:

EXTENSION OF SERVICE

1. Normal extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides a guarantee for such service.

2. Other extensions:

- a. When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50)

feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

b. Each customer receiving service under such extension will be reimbursed under following plan: Each year for a period of not less than ten (10) years, which for the purpose of this rule shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom, but in no case shall the total amount refunded exceed the amount paid the utility. After the end of the refund period, no refund will be required to be made.

This regulation requires water utilities to bear the entire cost of extending service to prospective customers when the extension to the existing main is 50 feet or less for each customer. If the extension requires more than 50 feet per customer, the customer is required to bear the cost of the construction for the excess footage. If, during the 10 year period following construction, additional customers connect to the extension, customers who paid for the construction are entitled to reimbursement of an amount equal to the cost of 50 feet for each new customer added to the line. Therefore, Boone County was required to pay that portion of the construction cost which equaled 50 feet per customer, despite the absence of this provision from the contract. Since 3 customers connected to the

system, Boone County was responsible under the regulation for the cost of constructing 150 feet of the extension and the Davises were responsible for footage in excess of 150 feet.

CONCLUSIONS OF LAW

The parties do not dispute the above, but rather dispute the figures which should be used in the calculation of construction costs. Although the contract provides that construction costs will be figured at \$15.00 per foot, the regulation calls for reimbursement to be calculated at the actual cost per foot. To the extent that the contract is inconsistent with the regulation, it is invalid and cannot be enforced. 17 Am.Jur.2d Contracts §230; Miller v. Miller, 296 S.W.2d 684, 688 (1956). Therefore, the Davises are responsible for the footage in excess of 150 feet at the actual cost of construction of \$20.27 per linear foot. The only remaining issue is the length of the total line for which the Davises are responsible.

Boone County maintains that, in accordance with its policy of extending lines to the furthest boundary from the point of connection, it is entitled to calculate the construction based on 220 feet. The issue is whether this policy is binding upon the Davises.

There is nothing to indicate that the Davises were aware of Boone County's policy requiring extensions to be made to the furthest boundary from the point of connection, nor was this rule stated in Boone County's tariff. On the contrary, the contract specifically stated that the construction would be made "to a point necessary to service Davis property" and the Davises could

reasonably assume from that language that the line would be extended only so far as necessary to provide them service. Although the Davises maintain that distance is 150 feet, the earlier compromise agreement, fixing the distance at 180 feet, is not in violation of the regulation and is enforceable.

Based on 180 linear feet of construction, at a cost of \$20.27 per foot, the total cost of construction of the extension for which the Davises are responsible is \$3,648.60. From that amount, the Davises are entitled to reimbursement for three connections to the line in the amount of \$3,040.50. Thus, their obligation for the cost of construction is \$608.10.

The Davises also contend that their total obligation to Boone County for the construction and connection to the line is contained in the contract, and they should not be assessed a tap-on fee. However, the tap-on fee, which is part of Boone County's published tariff, is separate and distinct from the construction of the extension and the Davises should be required to pay the fee which was in force at the time they made their connection in the amount of \$250 each or a total of \$500. This amount, when added to their obligation for the cost of construction, brings their total obligation to \$1102.10.

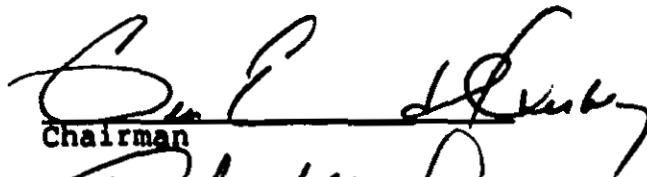
In summary, the Davises have paid \$2700 and were reimbursed \$1280.64 for a net payment of \$1419.36. This exceeds their total obligation of \$1108.10 by \$311.26 which they are entitled to recover from Boone County.

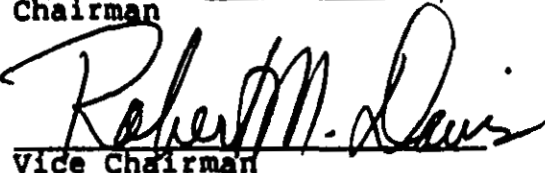
IT IS THEREFORE ORDERED that Boone County shall pay \$311.26 to Lewis and Dennis Davis within 30 days of the date of this

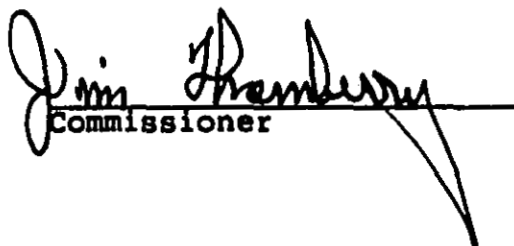
Order. Boone County shall file proof that payment has been made with the Commission within 10 days of the date of payment. Proof of payment may be demonstrated by copies of cancelled checks or any other means deemed sufficient by the Commission.

Done at Frankfort, Kentucky, this 25th day of October, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director